

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)	
)	
ASTROCOM CORPORATION)	Bankruptcy No. 03-35458
)	
)	Chapter 11 Case
Debtor.)	

NOTICE OF HEARING ON
MOTION TO DISMISS OR CONVERT

TO: The debtors, all creditors and other parties in interest:

A motion has been filed by the United States Trustee to dismiss or convert the above-captioned
Wednesday, June 9, 2004, at 10:00 a.m. before the Honorable Dennis D. O'Brien, U.S. Bankruptcy
Judge, in Courtroom No. 228A, U.S. Bankruptcy Court, 200 U.S. Courthouse, 316 North Robert Street,
St. Paul, Minnesota, the Court will hold a hearing to determine whether this case should be dismissed or
converted.

Any response to this motion must be filed and delivered not later than June 4, 2004, which is three
days before the time of the hearing, (not including Saturdays, Sundays or Holidays), or filed and served by
mail not later than May 28, 2004, which is seven days before the time set for the hearing. (not including
Saturdays, Sundays and Holidays). See Local Bankruptcy Rule 9006-1(b).

Dated: _____

CLERK OF BANKRUPTCY COURT

By: _____
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)	
)	
ASTROCOM CORPORATION)	Bankruptcy No. 03-35458
)	
)	Chapter 11 Case
Debtor.)	

NOTICE OF HEARING AND
MOTION TO DISMISS OR CONVERT CASE

TO: The debtors and other entities specified in Local Rule 9013-3.

1. Habbo G. Fokkena, the United States Trustee, by his undersigned attorney, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion on Wednesday, June 9, 2004, at 10:00 a.m. before the Honorable Dennis D. O'Brien, U.S. Bankruptcy Judge, in Courtroom No. 228A, U.S. Bankruptcy Court, 200 U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than June 4, 2004, which is three days before the time of the hearing, (not including Saturdays, Sundays or Holidays), or filed and served by mail not later than May 28, 2004, which is seven days before the time set for the hearing. (not including Saturdays, Sundays and Holidays). See Local Bankruptcy Rule 9006-1(b).

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005 and Local Rule 1070-1. The United States Trustee has standing to file this motion

pursuant to 28 U.S.C. § 586(a) and 11 U.S.C. § 307. This matter constitutes a core proceeding.

5. The petition commencing this chapter 11 cases was filed on August 7, 2003. Currently, the case is currently pending before this Court.

6. This motion arises under 11 U. S. C. § 1112(b) and FED. R. BANKR. P. 1017 and 2002. This motion is filed under FED. R. BANKR. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests that this case be dismissed or converted to a case under chapter 7.

7. Pursuant to 11 U.S.C. § 1112(b), the Court may dismiss or convert a chapter 11 case for cause after notice and a hearing. Section 1112(b) states that cause for dismissal or conversion to chapter 7 includes, among other things:

- a. continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
- b. inability to effectuate a plan; or
- c. unreasonable delay by the debtors that is prejudicial to creditors.

FACTS

8. On October 1, 2003, the United States Trustee, by his undersigned attorney, conducted the meeting of creditors required by 11 U.S.C. §341(a). At that meeting, the debtor testified through its president, Ronald Thomas. Mr. Thomas testified that the debtor manufactures computer hardware related to the establishment of multiple internet service providers which it sells to small and medium sized businesses. At the §341 meeting, it was stated that the debtor needed to resolve its lease, which was to expire by its terms in March, 2004. It further needed the chapter 11 to cease being a publicly traded company, which it expected to accomplish via a plan which gave debenture holders stock, thereby eliminating SEC compliance obligations.

9. A review of the docket in this case shows that there have been no substantive motions to resolve leases or other issues. The only secured claims are held by debenture holders and there are apparently no cash collateral issues. The only matters brought before the court since the inception of the case has been applications to employ professionals.

10. The debtor is current with its Monthly Operating Reports required by the U.S. Trustee. Those reports show that although the debtor is not losing money, it is also not accumulating cash with which to emerge from chapter 11. The debtor is also current on payment of U.S. Trustee fees.

MOTION TO CONVERT OR DISMISS

11. Cause to convert or dismiss exists under 11 U.S.C. §1112(b)(3) due to the unreasonable delay which is prejudicial to creditors. In the nine months this case has been pending, little progress appears to have been made in restructuring the debtor's business. During that time, the creditors have been subject to the automatic stay. The debtor does not, from a cash flow standpoint, appear to be building up cash, and nothing about the Debtor's situation appears to have changed in the last 9 months of this case. Any further delay in requiring the filing of a plan and disclosure statement is prejudicial to creditors and is cause for conversion or dismissal under §1112(b)(3).

12. Additional cause exists to convert this case to chapter 7 because there is an ongoing loss to and diminution of the estate and an absence of reasonable likelihood of rehabilitation. See 11 U.S.C. §1112(b)(1). While the case is pending, the debtor is not accumulating cash, but it does continue to incur administrative expenses, including professional fees and U.S. Trustee fees. The incurrence of those fees, without any related progress towards confirmation of a plan, constitutes an ongoing loss to and diminution of the estate. The debtor's failure to file a plan and disclosure statement evidences an absence of

reasonable likelihood of rehabilitation. As a result, additional cause exists to convert or dismiss under §1112(b)(1).

13. If the court determines not to convert the case to chapter 7 or dismiss it, the U.S. Trustee requests that a deadline be set by which the debtor is required to file a plan and disclosure statement. The court should set a further deadline establishing when a chapter 11 plan must be confirmed. The failure by the debtor to meet those deadlines should be cause to immediately convert the case to chapter 7 without further notice or hearing. Only with such a deadline is it certain that the debtor will make appropriate progress in resolving this chapter 11 case.

14. If necessary, the United States Trustee intends to call as a witness the following individuals:

Thomas Kleiner

Bankruptcy Analyst

Office of the U.S. Trustee

1015 U.S. Courthouse

300 South Fourth Street,

Minneapolis, MN 55415

Mr. Kleiner will testify to the likelihood that the debtor will be successful in reorganizing under chapter 11. The U.S. Trustee may also call other witnesses such as a representative of the Debtor to testify regarding the financial status of the debtor's business operations.

15. The debtor is not a person described in 11 U.S.C. § 1112(c). The debtor is qualified to be a debtor under chapter 7.

16. The United States Trustee believes that the foregoing constitutes cause for conversion or dismissal of the case. The United States Trustee believes that conversion of the case is in the best interest of the estate and its creditors.

WHEREFORE, the United States Trustee moves the Court for an order converting these cases to chapter 7 and for such other relief as may be just and equitable. The United States Trustee submits that

the cases should be converted or alternatively, a deadline should be established by which the debtor is required to file a plan and disclosure statement and obtain confirmation of a plan.

Dated: April 29, 2004

HABBO G. FOKKENA
United States Trustee
Region 12

By: s/ Michael R. Fadlovich
MICHAEL R. FADLOVICH
Attorney/Advisor
MN Attorney I.D. No. 158410
United States Trustee's Office
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5500

VERIFICATION

I, Michael R. Fadlovich, attorney for the United States Trustee, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: April 29, 2004

Signed:

s/Michael R. Fadlovich
MICHAEL R. FADLOVICH
Trial Attorney

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)
)
ASTROCOM CORPORATION) Bankruptcy No. 03-35458
)
) Chapter 11 Case
Debtor.)

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO CONVERT OR DISMISS

The United States Trustee, by the undersigned attorney, submits this memorandum in support of the motion to dismiss this case or convert it to a Chapter 7 case.

A proceeding to dismiss a case or convert a case to another chapter is governed by 11 U.S.C. § 1112 and FED R. BANKR. P. 9014. A request for dismissal or conversion of a case shall be made by motion. A motion to dismiss or a motion to convert a case shall be deemed a motion either to dismiss or to convert, whichever is in the best interest of creditors and the estate. Local R. Bankr. P. 1017-2. A case may be converted to a Chapter 7 case if the debtor may be a debtor under Chapter 7. 11 U.S.C. § 1112(f).

Cause for dismissal or conversion includes the following:

1. There is a continuing loss to or diminution of the debtor's estate and absence of a reasonable likelihood of rehabilitation. 11 U.S.C. §1112(b)(1); In re Minn. Alpha Foundation, 122 B.R. 89 (Bkrtcy.D.Minn 1990);

2. The debtor is unable to effectuate a plan. 11 U.S.C. §1112(b)(2); Hall v. Diminution, 887 F.2d 1041 (10th Cir. 1989); In re Fossum, 764 F.2d 520 (8th Cir. 1985); Moody v. Security Pacific Business Credit, Inc., 85 B.R. 319 (W.D. Pa.1988); In re Economy Cab & Tool Co., Inc., 44 B.R. 721, 725 (Bkrtcy. D. Minn. 1984);

3. There has been an unreasonable delay by the debtor which is prejudicial to the

interest of creditors. 11 U.S.C. §1112(b)(3); Moody v. Security Pacific Business Credit, Inc., 85 B.R. 319 (W.D. Pa. 1988);

Cause for conversion or dismissal is not limited to the reasons expressed in 11 U.S.C. §§ 1112(b),
(e). 11 U.S.C. 102(3); Moody v. Security Pac. Business Credit, Inc., 85 B.R. 319, 352-53 (W.D. Pa. 1988).

Respectfully submitted,
HABBO G. FOKKENA
United States Trustee

Dated April 15, 2004

By s/Michael R. Fadlovich
MICHAEL R. FADLOVICH
Trial Attorney
MN Attorney I.D. No. 158410
U.S. Trustee's Office
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5500

CERTIFICATE OF SERVICE

In Re:)	
)	
Astrocom Corporation		Bankruptcy No. 03-35458
)	
Debtor(s).)	Chapter 11 Case
)	
)	

I, Terri L. Frazer, declare under penalty of perjury that on April 29, 2004, I served a copy of the foregoing Notice of Hearing On Motion to Dismiss or Convert, Notice of Hearing and Motion to Dismiss or Convert Case, Memorandum of Law and proposed Order by U.S. mail, postage prepaid, to each person named below:

Ronald Thomas
Astrocom Corporation
3500 Holly Lane North, Suite 60
Plymouth, MN 55447-1284

Thomas F. Miller
715 Florida Avenue S., Suite 305
Minneapolis, MN 55426

James H Patterson
Patterson Thuente Skaar & Christensen
4800 Ids Center
80 S 8th St
Minneapolis Mn 55402

Merle L. and Blanche Durby
42473 150th Avenue
Leland IA 50453

Joseph & Carol Farmer
603 Donna Avenue
Tomah WI 54660

Norman Fletcher
6352 Shady Drive
Plover WI 54467

Steve and Carol Gessner
101 E Routan
Salem SD 57058

Harry Goldenberg
1030 Atlantic Ave
Atlantic City NJ 08401

S Albert D Hanser
1517 Sand Castle Road
Sanibel FL 33957

IndustriCorp & Co FBO T.C. Carpenters
c/o Union Bank & Trust Co
312 Central Avenue SE Ste 508
Minneapolis MN 55414

Kenneth E King
1740 Flamingo Drive
Eagan MN 55122

Kurt J King
6800 Brook Drive
Edina MN 55345

Mary Lach
5101 Lake Ridge Road
Edina MN 55436

Lee A Levine
3030 Atlantic Ave
Atlantic City NJ 08401

Levine & Staller PA
3030 Atlantic Avenue
Atlantic City NJ 08401

Richard P Maves
115 E Eighth St
PO Box 418
Crookston MN 56716

Michael and Sharon McHugh
714 EAgle Crest Dr
Madison WI 53704

Marius Poliac
12233 Wood Lake Drive
Burnsville MN 55337

Les & LeAnn Rogness Family Trust
420 W Vernon Avenue
Fergus Falls MN 56537

H Leigh Severance
14282 E Caley Ave
Aurora CO 80016

Daniel and Catherine Thums
N2621 Broadway Road
Prentice WI 54556

Harold G Wahlquist
5728 View Lane
Edina MN 55436

IRS District Director
Stop 5700
316 North Robert Street
St. Paul, MN 55101

Minnesota Dept. of Revenue
Collections Enforcement Unit
Bankruptcy Section
P.O. Box 64447
St. Paul, MN 55164

Securities & Exchange Commission
175 West Jackson Blvd, Suite 900
Chicago, IL 60604

Eugene C. Mathey
N8067 Everson Lane
Westboro WI 54490

A J McDonald III
3913 Avondale St
Minnetonka MN 55345

Robert and Carolyn Odegard
2287 Lake Ridge Dr
White Bear Lake MN 55110

Post Holdings LLC
2335 County Road 10
Loretto MN 55437

Rogness Family Trust
808 S Sheridan St Apt 204
Fergus Falls MN 56537

Ronald Thomas
6575 Old Settlers Rd
Corcoran MN 55340

Katherine D Townsend Ltd
Partnership'204 West Lincoln Avenue
Fergus Falls MN 56537

Medica
c/o Jane S Welch
333 S 7th St Ste 2000
Minneapolis MN 55402

IRS Office of Chief Counsel
650 Galtier Plaza
380 Jackson Street
St. Paul, MN 55101

Roylene A. Chapeaux
US Attorneys Office
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Dated: 4-29-04

By: 
Office of the United States Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

ASTROCOM CORPORATION

Debtor.

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Bankruptcy No. 03-35458

Chapter 11 Case

ORDER

At St. Paul, Minnesota, this ____ day of _____, 2004.

The above-entitled matter came before the undersigned on the Motion of the United States Trustee seeking an order dismissing this chapter 11 case or converting it to a case under chapter 7. Appearances were as noted in the record.

Based upon the motion, all of the files, records and proceedings herein, it is hereby ORDERED:

That the debtor shall file a plan and disclosure statement no later than _____, 2004. The debtor shall further obtain confirmation of its plan no later than _____, 2004.

Failure to meet either of these deadlines shall be cause for the immediate conversion of the case to chapter 7 with out further notice or hearing upon the filing of an affidavit of default by the U.S. Trustee.

HONORABLE DENNIS D. O'BRIEN
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

ASTROCOM CORPORATION

Debtor.

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Bankruptcy No. 03-35458

Chapter 11 Case

ORDER

At St. Paul, Minnesota, this ____ day of _____, 2004.

The above-entitled matter came before the undersigned on the Motion of the United States Trustee seeking an order dismissing this chapter 11 case or converting it to a case under chapter 7.

Appearances were as noted in the record.

Based upon the motion, all of the files, records and proceedings herein, it is hereby ORDERED:

That the chapter 11 case of Astrocom Corporation is hereby converted to chapter 7.

HONORABLE DENNIS D. O'BRIEN
United States Bankruptcy Judge